IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1693 of 2007

MOHAN LAL JANGID
V/S
MISHRI LAL & ORS.

Mr. RK THANVI, for the appellant / petitioner

Mr. NR CHOUDHARY, for the respondent

Date of Order : 18.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

From perusal of the order-sheets of the learned trial court, it transpires that the case was fixed for petitioner's evidence on 19.12.2006, on that day, the case was adjourned and was fixed on 11.01.2007. On 11.01.2007, again adjournment was given, and the case was listed on 27.01.2007. On 27.01.2007, the petitioner led his evidence, comprising of affidavit of Mohan Lal, and the case was fixed on 29.01.2007. Obviously, on that day, no request was made for providing any further time for affidavit. On 29.1.2007, even dependent Mohan Lal was not present, nor any more affidavits were filed, though the petitioner was not entitled to file any affidavit.

Learned trial court found that there is no sufficient cause for not keeping the witness present and

no list of witnesses has been filed either. In that view of the matter, evidence of the petitioner was closed.

Assailing the impugned order, it was contended that the defendant-petitioner did not get sufficient opportunity to lead evidence, and the order of the trial court was bad, it was also contended that on 29.01.2007, the case was fixed only for cross-examination of Mohan Lal and thereafter other evidence could be produced subsequently.

In my view, the contention cannot be accepted. As noticed above, the petitioner had been granted sufficient opportunity to lead evidence, inasmuch as the plaintiff's evidence was over on 29.11.2006, and the case was fixed for petitioner's evidence on 19.12.2006, on that day, adjournment was given, and again on 11.01.2007, adjournment was given, and even on 27.01.2007, the petitioner could produce affidavit of such number of defence, as he desired, but then he rested contented by filing affidavit of Mohan Lal only, then on 29.01.2007, again even Mohan Lal was not kept present, nor any other affidavit had been filed of any other witnesses. In that view of the matter, I do not find any error in the impugned order so as to require any inteference in the writ petition.

Notwithstanding this, in an attempt to bear benevolance, learned counsel was asked as to whether his client is prepared to avail further opportunity on paying reasonable costs, to which learned counsel declined.

In view of above, the writ petition has no force and is dismissed.

(N P GUPTA),J.

/Vijayant/